Inai Etike Sdn Bhd v Mohd Fadzil Bin Wadi & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO D2-22-242 OF 1995
LOW HOP BING J
6 JULY 1995

Civil Procedure *— Parties — Joinder of parties — Summons for intervention — Whether sufficient interest to be made a party — Wide powers of the court in dealing with the application — Rules of the High Court 1980 O 15 r 6(2)(b)*

The plaintiff was set up by the applicant for the sole purpose of making it the vehicle for the purchase of a 70% stake in a brick manufacturing company. Subsequent to the incorporation of the plaintiff, one Johan and the first defendant became equal shareholders in their capacities as the applicant's nominees. Johan, first defendant, one Razali and one Anuar were appointed as directors of the plaintiff all in their capacities as the applicant's nominees. Johan and Razali pre-signed their letters of resignation and various resolutions to effect their resignation and to appoint a new director in their stead. Because of suspicion that Johan and Razali had done some unauthorized acts or withdrawn various sums of money from the plaintiff's account, the applicant used the pre-signed form to effect the resignation and appointment of a new director. Johan and Razali challenged the applicant's ownership of the plaintiff and consequently their role as the applicant's nominees. They attempted to recover possession of certain of the plaintiff's records from the defendants. The present application concerned only one issue, ie whether the applicant Peh Teck Quee might be permitted to intervene in these proceedings pursuant to O 15 r 6 of the Rules of the High Court 1980.

Held, allowing the application and granting the applicant leave to intervene:

(1) The relevant provision which governed this application was to be found in O 15 r 6(2)(b) of the Rules of the High Court 1980.

(2) In deciding whether to join an additional party to an existing action, the court has to decide whether his rights against or liabilities to any party to the action in respect of the subject matters of the action will be directly affected by any order which may be made in the action.

(3) The applicant had proved that he was a person claiming an interest in the subject matter of this suit and thus should be allowed to intervene.

[Bahasa Malaysia summary

Plaintif ditubuhkan oleh pemohon dengan tujuan tunggal untuk dijadikan alat untuk membeli 70% saham dalam syarikat membuat

batu-bata. Selepas perbadanan plaintif, seorang Johan dan defendan pertama menjadi pemegang saham sama rata dalam kedudukan mereka sebagai penerima namaan pemohon. Johan, defendan pertama, seorang Razali dan seorang Anuar dilantik sebagai pengarah plaintif, kesemuanya dalam kedudukan mereka sebagai penerima namaan pemohon. Johan dan Razali terlebih dahulu menandatangani surat perletakan jawatan dan beberapa resolusi untuk menguatkuasakan perletakan jawatan mereka dan untuk melantik pengarah baru bagi menggantikan tempat mereka. Oleh kerana syak wasangka bahawa Johan dan Razali telah membuat berbagai tindakan yang mereka tidak diberikuasa atau mengeluarkan berbagai jumlah wang daripada akaun plaintif, pemohon menggunakan borang yang ditandatangani terlebih dahulu itu untuk menguatkuasakan perletakan jawatan dan perlantikan pengarah baru. Johan dan Razali mencabar hakmilik pemohon terhadap plaintif dan ekoran daripada itu fungsi mereka sebagai penerima namaan pemohon. Mereka mencuba untuk mendapatkan kembali pemilikan beberapa rekod plaintif daripada defendan-defendan. Permohonan sekarang hanya berkenaan dengan satu isu, iaitu sama ada pemohon Peh Teck Quee boleh dibenarkan untuk mencelah di dalam prosiding ini mengikut A 15 k 6 Kaedah-Kaedah Mahkamah Tinggi 1980.

Diputuskan, membenarkan permohonan dan memberikan pemohon kebenaran untuk mencelah:

(1) Peruntukan yang berkaitan yang mengawal permohonan ini boleh didapati dalam A 15 k 6(2)(b) Kaedah-Kaedah Mahkamah Tinggi 1980.

(2) Dalam menentukan sama ada untuk mencantumkan satu pihak tambahan kepada satu tindakan sedia ada, mahkamah mesti membuat keputusan adakah haknya terhadap atau liabiliti kepada mana-mana pihak kepada tindakan itu berkenaan dengan bahan perkara tindakan itu akan terjejas secara langsung oleh apa-apa perintah yang akan diberikan dalam tindakan itu.

(3) Pemohon telah membuktikan bahawa beliau adalah seorang yang menuntut satu kepentingan di dalam bahan perkara tindakan ini dan oleh itu patut dibenarkan mencelah.]

Notes

For cases on intervention of parties, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2404–2412; [1994] *Mallal's Digest* 407–411; [1995] *Mallal's Digest* 267.

Cases referred to

Arab Malaysian Merchant Bank Bhd v Jamaludin Bin Dato Mohd Jarjis [1991] 2 MLJ 27 (folld)

Kang Kok Kwang v Bukit Baru Centre Sdn Bhd & Ors [1991] 1 CLJ 343 (refd)

Pegang Mining Co Ltd v Choong Sam & Ors [1969] 2 MLJ 52 (folld)
Yeng Hing Enterprise Sdn Bhd v Liow Su Fah [1979] 2 MLJ 240 (refd)

Legislation referred to

Rules of the High Court 1980 O 15 r 6

Shook Lin & Bok for the plaintiff.
Shearn Delamore & Co for the defendant.

Low Hop Bing J: This application by way of summons in chambers in Enclosure 18 is filed by one Peh Teck Quee for various orders. For the purposes of this application, the parties have requested that the hearing herein be confined to one issue, ie whether the applicant, Peh Teck Quee, may be permitted to intervene in these proceedings pursuant to O 15 r 6 of the Rules of the High Court 1980?

The other issues in the same enclosure are kept in abeyance until the application for leave to intervene has been determined.

In support of the application, learned counsel for the applicant submitted that the applicant comes with O 15 r 6(2)(b) and so leave to intervene should be granted to him. Learned counsel for the plaintiff objected to the application and held the view that the applicant was already a party in another suit, ie D5–22–240–95 wherein the applicant could pursue his remedies. In the present suit, according to him, the applicant did not have sufficient interest for him to be made a party.

On my part, in order to arrive at a proper decision as to whether the requirements of O 15 r 6(2)(a) and (b) have been complied with, so that leave to intervene may be given to the applicant, it is necessary to go into the allegations of facts in some detail pursuant to various affidavits filed herein.

The plaintiff was set up by the applicant for the sole purpose of making it the vehicle for the purchase of 70% of the shares ('the 70% stake') in a brick manufacturing company known as Kuo Shinn Bricks Industries Sdn Bhd ('KSBI').

Subsequent to the incorporation of the plaintiff, one Johan Ariffin ('Johan') and the first defendant became equal shareholders in their capacities as the applicant's nominees. In addition to Johan, one Mohd Razali bin Mohd Rahim ('Razali'), the first defendant and one Anuar bin Abu Hassan (who subsequently resigned) were appointed as directors of the plaintiff, all in their capacities as the applicant's nominees.

Johan and Razali accordingly pre-signed their letters of resignation and various resolutions to effect their resignations and to appoint a new director in their stead, thus granting the applicant the option of removing them as the applicant's nominees as and when the applicant thought appropriate.

This was the original agreement between Johan, Razali and the applicant and remained the agreement until the applicant lawfully removed them as directors of the plaintiff for the reasons stated hereinafter. The applicant recently discovered that Johan and Razali have been engaging in various activities without the applicant's knowledge and/or consent, such as misusing the funds of the plaintiff and procuring the execution of documents with the intention of surreptitiously usurping the applicant's interest in the plaintiff.

Sometime in early April this year, the first defendant informed the applicant that Johan and Razali had requested him in February and March 1995 to execute various documents, and on each occasion the first defendant was told by Johan and Razali that such requests originated from the applicant.

The applicant denied having issued those instructions, nor any knowledge of the transactions in question. The applicant was extremely concerned by the actions of Johan and Razali and decided to curtail their further involvement in the plaintiff as the applicant's nominees.

Accordingly, the applicant utilized the pre-signed letters of resignation and resolutions, as was always the intention of the arrangement between Johan, Razali and the applicant to do the following:

(a) Effect the resignation of Johan and Razali as directors of the plaintiff and appoint the second defendant as a director of the plaintiff.

(b) As a protective measure to enable the applicant to investigate the activities of Johan and Razali, the applicant transferred certain company records to the applicant's office at Wembley Industries Holding Bhd at 18th Floor, MUI Plaza, Jalan P Ramlee, 50250 Kuala Lumpur.

Upon investigating the conduct of Johan and Razali further, the applicant discovered that they had withdrawn various sums of money from the plaintiff's account, which withdrawals were not authorized by the applicant.

Upon Johan and Razali realizing that the applicant had become aware of their activities, they attempted to recover possession of the plaintiff's records.

Johan and Razali also challenged the applicant's ownership of the plaintiff and consequently their role as the applicant's nominees.

The above account reflects the allegations of facts as affirmed in the affidavits filed herein. On the question of Johan and Razali being the nominees of the applicant, it was contended by learned counsel for the plaintiff that art 6 of the plaintiff's articles of association never recognized any trust at all. He relied on art 6 which reads as follows:

> 6. No person shall be recognised by the Company as holding any share upon any trust, and the Company shall not be bound by or be required in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any other rights in respect of any share other than an absolute right

> to the entity thereof in the registered holder except only as by these Articles otherwise provided for or as by Act required or pursuant to any order of court.

He also submitted that the applicant has no locus standi, being neither a director nor a shareholder of the plaintiff. In support of this submission, he relied on *Kang Kok Kwang v Bukit Baru Centre Sdn Bhd* [1991] 1 CLJ 343; and *Yeng Hing Enterprise Sdn Bhd v Liow Su Fah* [1979] 2 MLJ 240.

The applicant's counsel on the other hand, submitted that the court has very wide powers under O 15 r (2) to grant the applicant leave to intervene. This, according to the learned counsel for the applicant, is particularly so on the facts of this case in which there is sufficient nexus to enable the applicant to be made a party.

In my considered view, the relevant provision which governs this application is to be found in O 15 r 6 (2)(b) which reads as follows:

> (2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application—
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> (a) ... or
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> (b) order any of the following persons to be added as a party, namely—
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> (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
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> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter;
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> but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorized.

The Privy Council in *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52 has thrown some light on the wide powers of the court in dealing with an application such as the present one before me. Lord Diplock at p 55 said:

> The cases illustrate the great variety of circumstances in which it may be sought to join an additional party to an existing action. In their Lordships' view one of the principal objects of the rule is to enable the court to prevent injustice being done to a person whose rights will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard. To achieve this object calls for a flexibility of approach which makes it undesirable in the present case, in which the facts are unique, to attempt to lay down any general proposition which could be applicable to all cases.
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> ...

> A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action.

The *Pegang Mining* case has been followed by our Supreme Court in *Arab Malaysian Merchant Bank Bhd v Jamaludin bin Dato Mohd Jarjis* [1991] 2 MLJ 27, which ruled that the object of the rule calls for a flexibility of approach.

The applicant has proved that he is a person claiming an interest in the subject matter of the suit herein and therefore wishes to be made a party hereto for the purpose of protecting his interest. I therefore allow this application and hereby grant him leave to intervene.

Order accordingly.

Reported by Richard Leung